

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

LAWRENCE BREEDLOVE,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-08-1065-D
)	
DENNIS COSTNER, <i>et al.</i> ,)	
)	
Defendants.)	

**REPORT AND RECOMMENDATION CONCERNING
THE PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

Mr. Lawrence Breedlove has sued under 42 U.S.C. § 1983 and the Americans with Disabilities Act and seeks summary judgment on all claims. Motion for Summary Judgment and Declaratory Relief and Brief in Support (Mar. 27, 2009). However, the undersigned has elsewhere recommended:

- summary dismissal of the claims arising under the Americans with Disabilities Act and
- dismissal or summary judgment for all defendants on the Plaintiff’s existing claims under Section 1983.¹

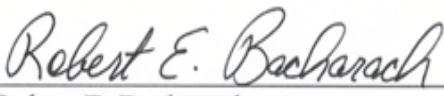
¹ The undersigned has recommended that the Court allow Mr. Breedlove to seek leave to amend the complaint if he believes he can cure the pleading defects regarding the link between K. Harvoneck, M. Sirmons, D. Morton, or Justin Jones and the alleged deprivation of due process from the destruction of property in July 2007 or imposition of a disciplinary conviction in January 2007. Report and Recommendation on the Defendants’ Dispositive Motion with Respect to the Section 1983 Claims at pp. 11, 42 (Dec. 8, 2009).

Because none of the Plaintiff's existing claims should survive screening and the dispositive motion, the undersigned recommends denial of Mr. Breedlove's summary judgment motion on grounds of mootness.²

The parties can object to the present report and recommendation. Any such objection must be filed with the Clerk of this Court by December 28, 2009. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a)(3)(A), 6(a)(6)(A), 6(d), 72(b)(2). The failure to timely object would foreclose appellate review of the suggested ruling.³

The referral is not terminated.

Entered this 8th day of December, 2009.


Robert E. Bacharach
United States Magistrate Judge

² *See Jones v. Bass*, 149 Fed. Appx. 764, 765-66 (10th Cir. Sept. 2, 2005) (unpublished op.) (affirming the dismissal of all claims against the defendants and denial of the plaintiff's summary judgment motion on grounds of mootness); *Hutchinson v. Pfeil*, 211 F.3d 1278, 2000 WL 345688, Westlaw op. at 1, 5 (10th Cir. Apr. 4, 2000) (unpublished op.) (same).

³ *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); *cf. Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) ("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived.").